

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

ALFRED G. OSTERWEIL,

Plaintiff,

v.

09-cv-825  
MAD/DRH

GEORGE R. BARTLETT, III,

Defendant.

**DECLARATION OF ALFRED G. OSTERWEIL**

ALFRED G. OSTERWEIL affirms under penalty of perjury that:

1. I am the Plaintiff in this action, and, as such, I am fully familiar with the facts and circumstances pertaining to this matter. This declaration is in support of my motion pursuant to 42 U.S.C. § 1988 and Fed. R. Civ. P. 54(d)(2) to award attorneys' fees as the prevailing party.
2. In connection with this action I personally incurred filing fees in this Court and in the United States Court of Appeals for the Second Circuit.
3. Attached hereto as Exhibit "A" is the ECF Docket from this matter showing that I paid \$350 to file the Complaint (DKT#1) and \$455 to file the Notice of Appeal (DKT#39). As such, the sum of \$805 should be included in the total award in connection with this motion.

**DECLARATION UNDER PENALTY OF PERJURY**

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated: March 10, 2014

  
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ALFRED G. OSTEWEIL

## **EXHIBIT A**

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**Andrew M. Cuomo**  
*In his official capacity as Attorney General  
of the State of New York*  
TERMINATED: 02/24/2010

represented by **Roger W. Kinsey**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
07/21/2009	<u>1</u>	COMPLAINT against George R. Bartlett III, David A. Paterson, and Andrew M. Cuomo (Filing fee paid: \$350; receipt number ALB5199) filed by Alfred G. Osterweil, Pro Se. (Attachments: # <u>1</u> Civil Cover Sheet)(sg) (Entered: 07/21/2009)
07/21/2009		Summons Issued on 7/21/2009 as to George R. Bartlett III, David A. Paterson, and Andrew M. Cuomo. (sg) (Entered: 07/21/2009)
07/21/2009	<u>2</u>	G.O. 25 FILING ORDER ISSUED: Initial Conference set for 11/25/2009 at 9:00 AM in Albany before Magistrate Judge David R. Homer. Civil Case Management Plan due by 11/16/2009. (sg) (Entered: 07/21/2009)
07/21/2009	<u>3</u>	PRO SE HANDBOOK and NOTICE issued and explained at time complaint was filed. (sg ) (Entered: 07/21/2009)
07/24/2009	<u>4</u>	SUMMONS Returned Executed by Alfred G. Osterweil. David A. Paterson served on 7/21/2009, answer due 8/10/2009. (ban) (Entered: 07/24/2009)
07/24/2009	<u>5</u>	SUMMONS Returned Executed by Alfred G. Osterweil. George R. Bartlett III served on 7/23/2009, answer due 8/12/2009. (ban) (Entered: 07/24/2009)
08/05/2009	<u>6</u>	Letter Motion from Roger W. Kinsey for George R. Bartlett III, David A. Paterson, Andrew M. Cuomo requesting extension of time in which to respond to the complaint submitted to Judge Homer. (Kinsey, Roger) (Entered: 08/05/2009)
08/07/2009	<u>7</u>	ORDER granting <u>6</u> Letter Request, George R. Bartlett III answer due 9/12/2009; David A. Paterson answer due 9/12/2009; Andrew M. Cuomo answer due 9/12/2009. Signed by Magistrate Judge David R. Homer on 8/7/09. (tab) (Entered: 08/07/2009)
09/03/2009	<u>8</u>	MOTION to Dismiss Motion Hearing set for 10/15/2009 09:00 AM in Albany before Judge Gary L. Sharpe Response to Motion due by 9/28/2009 Reply to Response to Motion due by 10/5/2009. filed by George R. Bartlett III, David A. Paterson, Andrew M. Cuomo. (Attachments: # <u>1</u> Memorandum of Law Defendants' Memo, # <u>2</u> Appendix Appendix of unreported cases) (Kinsey, Roger) Modified on 9/3/2009 (jel, ). (Entered: 09/03/2009)
09/03/2009		CLERK'S CORRECTION OF DOCKET ENTRY - Corrected docket entry <u>8</u> Motion to Dismiss to reflect the location for the motion return for Albany and not Binghamton. (jel, ) (Entered: 09/03/2009)
09/03/2009	<u>9</u>	AFFIDAVIT of Service for Notice of Motion to Dismiss and Supporting Memo served on Plaintiff on 9/3/2009, filed by George R. Bartlett III, David A. Paterson, Andrew M. Cuomo. (Kinsey, Roger) (Entered: 09/03/2009)
09/17/2009	<u>11</u>	MEMORANDUM OF LAW in opposition to <u>8</u> Motion to Dismiss, filed by Alfred G. Osterweil. (tab) (Entered: 09/18/2009)
09/18/2009	<u>10</u>	REPLY to Response to Motion re <u>8</u> MOTION to Dismiss filed by George R. Bartlett III, David A. Paterson, Andrew M. Cuomo. (Kinsey, Roger) (Entered: 09/18/2009)

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09/21/2009	<u>12</u>	AFFIDAVIT of Service by Mail of plaintiff's <u>11</u> Memorandum and Appendix served on 9/16/09 upon Roger W. Kinsey, Office of Attorney General, filed by Alfred G. Osterweil. (sg) (Entered: 09/22/2009)
10/13/2009		TEXT ONLY NOTICE of Hearing on Motion <u>8</u> MOTION to Dismiss : Motion Hearing set for 10/15/2009 at 09:00 AM in Albany before Judge Gary L. Sharpe will be on SUBMIT only. No personal appearances are needed. (jel, ) (Entered: 10/13/2009)
10/14/2009		Mailed copy of the October 13, 2009 text only notice to all non cm/ecf parties. (jel, ) (Entered: 10/14/2009)
10/15/2009	<u>13</u>	Letter Motion from Roger W. Kinsey for George R. Bartlett III, David A. Paterson, Andrew M. Cuomo requesting adjourn the Rule 16 conference submitted to Judge Homer. (Kinsey, Roger) (Entered: 10/15/2009)
10/16/2009		TEXT NOTICE re <u>13</u> . The Rule 16 Conference set for November 25, 2009 with Magistrate Judge Homer is ADJOURNED WITHOUT DATE pending decision on the dispositive motion before Judge Sharpe. [copy of Text Notice sent by regular mail to plaintiff pro se.] (lah, ) (Entered: 10/16/2009)
10/27/2009	<u>14</u>	NOTICE of Change of Address by Alfred G. Osterweil Effective Date 10/30/09 Old Address: [REDACTED] (tab) (Entered: 10/28/2009)
02/24/2010	<u>15</u>	MEMORANDUM-DECISION AND ORDER: ORDERED that defendants' <u>8</u> motion to dismiss is GRANTED as to Osterweil's first, second, and third causes of action, and those causes of action are DISMISSED; ORDERED that defendants' <u>8</u> motion to dismiss is DENIED as to Osterweil's fourth, fifth, and sixth causes of action; ORDERED that defendants David A. Paterson and Andrew M. Cuomo are DISMISSED from the action. Signed by Judge Gary L. Sharpe on 2/24/2010. (mgh) (Entered: 02/24/2010)
02/24/2010		Memorandum-Decision and Order Dkt. No. <u>15</u> served on plaintiff via regular mail. (mgh) (Entered: 02/24/2010)
03/10/2010		TEXT NOTICE. A Telephone Rule 16 Scheduling Conference will be held with Magistrate Judge David R. Homer on MARCH 22, 2010 at 9:30 AM. The court will initiate the conference call. The parties shall e-file a Civil Case Management Plan on or before 3/18/2010. [A copy of the text notice sent by regular mail to plaintiff pro se.] (lah, ) (Entered: 03/10/2010)
03/15/2010	<u>16</u>	CIVIL CASE MANAGEMENT PLAN by George R. Bartlett, III. (Kinsey, Roger) (Entered: 03/15/2010)
03/22/2010		Minute Entry for proceedings held before Magistrate Judge David R. Homer. A Rule 16 Conference was held by telephone on 3/22/2010 with Alfred Osterweil, plaintiff pro se, and AAG Roger Kinsey, counsel for defendant. Neither party foresees the need for any discovery beyond the Rule 26 disclosures already made by defendant. Both parties expect that the case will be decided on motions by the Supreme Court. There is no possibility of settlement as this case presents a purely legal issue. The case will opt-out of ADR. A scheduling order will be entered. A telephone status conference will be held on 7/19/2010 at 11:00 AM to assess the status of the case. [copy of Text Minute Entry sent by regular mail to plaintiff pro se] (lah, ) (Entered: 03/24/2010)
03/24/2010		TEXT NOTICE. A Telephone Status Conference will be held with Magistrate Judge

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		David R. Homer on JULY 19, 2010 at 11:30 AM [EST]. The Court will initiate the conference call. [copy of Text Notice sent by regular mail to plaintiff pro se] (lah, ) (Entered: 03/24/2010)
03/24/2010	<u>17</u>	UNIFORM PRETRIAL SCHEDULING ORDER: Anticipated length of trial: two days. Preferred Trial Location: Albany. Joinder of Parties due by 5/1/2010. Amended Pleadings due by 5/1/2010. Discovery due by 8/1/2010. Motions to be filed by 10/1/2010. This action has been Opted Out of the district's ADR program. Signed by Magistrate Judge David R. Homer on 3/24/2010. (mgh) (Entered: 03/24/2010)
03/24/2010	<u>18</u>	Uniform Pretrial Scheduling Order Dkt No. <u>17</u> served on plaintiff via regular mail. (mgh) (Entered: 03/24/2010)
07/02/2010	<u>19</u>	Letter Motion for Alfred G. Osterweil requesting that the Court reconsider its Decision and Order issued on February 24, 2010 in light of the recent Supreme Court opinion in McDonald v. Chicago submitted to Judge Sharpe. (mgh) (Entered: 07/07/2010)
07/19/2010		Minute Entry for proceedings held before Magistrate Judge David R. Homer. A Telephone Status Conference was held on 7/19/2010 with defendant's counsel, AAG Roger Kinsey. Plaintiff was not available for the conference. Two telephone calls to the telephone number of plaintiff listed on the docket went unanswered. Messages were left. AAG Kinsey advised that the parties do not require any discovery and the matter will be presented as a purely legal issue in a dispositive motion. [copy of minute entry sent by regular mail to Alfred Osterweil] (lah, ) (Entered: 07/21/2010)
07/27/2010	<u>20</u>	Letter from Alfred G. Osterweil advising the Court of his current address information. Secondary Address as follows: [REDACTED] (mgh) (Entered: 07/28/2010)
08/06/2010	<u>21</u>	ORDER, the court has reviewed the plaintiff's <u>19</u> Letter Motion requesting that the Court reconsider its Decision and Order issued on February 24, 2010 in light of the recent Supreme Court opinion in McDonald v. Chicago and directs the plaintiff to submit a formal motion in full compliance with the local rules. Signed by Judge Gary L. Sharpe on 8/6/2010. (jel, ) (Entered: 08/06/2010)
08/06/2010		Mailed copy of the <u>21</u> letter/order to all non cm/ecf parties. (jel, ) (Entered: 08/06/2010)
08/18/2010	<u>22</u>	MOTION to Vacate <u>15</u> Order on Motion to Dismiss, filed by Alfred G. Osterweil. (Attachments: # <u>1</u> Memorandum of Law, # <u>2</u> Affidavit of Alfred G. Osterweil, # <u>3</u> Cover Letter) (mgh) (Entered: 08/20/2010)
08/26/2010		TEXT ONLY NOTICE of Hearing on Motion <u>22</u> MOTION to Vacate <u>15</u> Order on Motion to Dismiss, : Response to Motion due by 9/20/2010. Motion Hearing set for 10/7/2010 at 09:00 AM in Albany before Judge Gary L. Sharpe on SUBMIT only. No personal appearances are needed. (jel, ) (Entered: 08/26/2010)
08/26/2010		Mailed copy of the August 26, 2010 text only notice to all non cm/ecf parties. (jel, ) (Entered: 08/26/2010)
09/07/2010	<u>23</u>	LETTER BRIEF on Second Amendment Claims by George R. Bartlett, III. (Kinsey, Roger) (Entered: 09/07/2010)
09/23/2010	<u>24</u>	Letter Motion from Roger W. Kinsey for George R. Bartlett, III requesting adjournment of motion date submitted to Judge Homer and joined by Plaintiff Osterweil. (Kinsey, Roger) (Entered: 09/23/2010)

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09/24/2010	<u>25</u>	ORDER granting 24 Letter Request adjourning dispositive motion deadline. Signed by Magistrate Judge David R. Homer on 9/23/2010. {Order served on plaintiff via regular mail} (mgh) (Entered: 09/24/2010)
02/04/2011	<u>26</u>	MEMORANDUM-DECISION and ORDER, that Osterweil's 22 Motion for Reconsideration is GRANTED. That this court's February 24, 2010 Memorandum-Decision and Order is REVERSED insofar as it dismissed Osterweil's first, second, and third causes of action. That Osterweil's first, second and third causes of action are REINSTATED. Signed by Judge Gary L. Sharpe on 2/4/2011. (jel, ) (Entered: 02/04/2011)
02/04/2011		Mailed copy of the 26 Memorandum-Decision and Order to all non cm/ecf parties. (jel, ) (Entered: 02/04/2011)
02/04/2011	<u>27</u>	ANSWER to 1 Complaint by George R. Bartlett, III. (Attachments: # 1 Declaration of service of Answer by traditional means)(McGowan, James) (Entered: 02/04/2011)
02/08/2011	<u>28</u>	Letter Motion from AAG McGowan for George R. Bartlett, III requesting an extension of the dispositive motion deadline to April 5, 2011, on consent from plaintiff pro se submitted to Judge Homer. (McGowan, James) (Entered: 02/08/2011)
02/09/2011	<u>29</u>	ORDER granting 28 Letter Request. Dispositive Motions to be filed by 4/5/2011. Signed by Magistrate Judge David R. Homer on 2/9/2011. {Order served on plaintiff via regular mail} (mgh) (Entered: 02/09/2011)
02/17/2011	<u>30</u>	MOTION for Summary Judgment filed by Alfred G. Osterweil. (mgh) (Entered: 02/17/2011)
02/25/2011	<u>31</u>	Letter Motion from AAG McGowan for George R. Bartlett, III requesting an extension of time to April 5, 2011, to respond to plaintiff's motion for summary judgment set forth at Docket # 30 submitted to Judge Homer. (McGowan, James) (Entered: 02/25/2011)
03/01/2011	<u>32</u>	ORDER granting 31 Letter Request re 30 MOTION for Summary Judgment. Request is GRANTED. The defendants' response papers are to be filed on or before 4/5/2011. The plaintiff's reply papers are to be filed on or before 4/19/2011. The motion hearing has been scheduled for 5/5/2011 at 9:00 a.m. on SUBMIT only. No personal appearances are needed. Signed by Judge Gary L. Sharpe on 3/1/2011. (dpk) (Entered: 03/01/2011)
03/11/2011	<u>33</u>	Cross MOTION for Summary Judgment Motion Hearing set for 5/10/2011 09:00 AM in Albany before Judge Gary L. Sharpe Response to Motion due by 4/25/2011 Reply to Response to Motion due by 4/29/2011. filed by George R. Bartlett, III. (Attachments: # 1 Declaration Bartlett Declaration, # 2 Statement of Material Facts Defendants Statement, # 3 Statement of Material Facts Defendant's response to Plaintiff's Statement, # 4 Memorandum of Law Defendant's Memo of Law) (Kinsey, Roger) (Entered: 03/11/2011)
03/24/2011	<u>34</u>	RESPONSE in Opposition re 33 Cross MOTION for Summary Judgment filed by Alfred G. Osterweil. (Attachments: # 1 Cover Letter)(mgh) (Entered: 03/24/2011)
04/20/2011	<u>35</u>	ORDER REASSIGNING CASE. Case reassigned to U.S. District Judge Mae A. D'Agostino for all further proceedings. Judge Gary L. Sharpe no longer assigned to case. Signed by Chief Judge Norman A. Mordue on 4/20/11. (ban) (Entered: 04/20/2011)
04/20/2011		Mailed a copy of 35 Order Reassigning case to All Non-ECF parties. (ban) (Entered:

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		04/20/2011)
04/25/2011		TEXT NOTICE of Hearing on Motion <u>30</u> MOTION for Summary Judgment, <u>33</u> Cross MOTION for Summary Judgment: The Motion Hearing is reset for 5/17/2011 10:00 AM in Albany (ON SUBMIT) before U.S. District Judge Mae A. D'Agostino. Response to Motion due by 4/25/2011, Reply to Response to Motion due by 4/29/2011. The Motions will be decided on the submission of the papers, only. NO personal appearances are necessary. No further submissions will be accepted without the prior approval of the Court.(ban) (Entered: 04/25/2011)
04/25/2011		Mailed a copy of the 4/25/11 Text Notice re-setting the motion hearing, to all Non-ECF parties. (ban) (Entered: 04/25/2011)
05/20/2011	<u>36</u>	MEMORANDUM-DECISION AND ORDER. ORDERED that plaintiff's <u>30</u> Motion for Summary Judgment is DENIED in its entirety; ORDERED that defendant's <u>33</u> Cross-Motion for Summary Judgment is GRANTED in its entirety. Signed by U.S. District Judge Mae A. D'Agostino on 5/20/11. (ban) (Entered: 05/20/2011)
05/20/2011	<u>37</u>	JUDGMENT in favor of George R. Bartlett, III against Alfred G. Osterweil. IT IS ORDERED AND ADJUDGED that plaintiff's motion for summary judgment is DENIED in its entirety; ORDERED that defendant's cross motion for summary judgment is GRANTED in its entirety, all in accordance with the Memorandum-Decision and Order of the Honorable Mae A. D'Agostino, signed 5/20/11. (ban) (Entered: 05/20/2011)
05/20/2011		Mailed a copy of [36, 37] to Pro se Plaintiff Alfred Osterweil, via certified mail/Return receipt. (ban) (Entered: 05/20/2011)
05/27/2011	<u>38</u>	Acknowledgment of Receipt of Certified Mail <u>36</u> Order on Motion for Summary Judgment <u>37</u> Judgment, received by Alfred Osterwel on 5/23/2011 (mgh) (Entered: 05/31/2011)
06/13/2011	<u>39</u>	NOTICE OF APPEAL as to <u>36</u> Order on Motion for Summary Judgment <u>37</u> Judgment, by Alfred G. Osterweil. Filing fee \$ 455, receipt number ALB006682. (mgh) (Entered: 06/13/2011)
06/13/2011	<u>40</u>	ELECTRONIC NOTICE AND CERTIFICATION sent to US Court of Appeals re <u>39</u> Notice of Appeal (mgh) (Entered: 06/13/2011)
06/13/2011	<u>41</u>	CERTIFICATE OF SERVICE by Alfred G. Osterweil re <u>39</u> Notice of Appeal (mgh) (Entered: 06/15/2011)
08/09/2011		USCA Case Number is 11-2420 for <u>39</u> Appeal filed by Alfred G. Osterweil. (cbm ) (Entered: 08/09/2011)

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